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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY WASHINGTON,
D.C. 20460

OCT 18 2018

OFFICE OF CONGRESSIONAL
AND INTERGOVERNMENTAL RELATIONS

The Honorable Fred Upton
Chairman
Committee on Energy and Commerce
Subcommittee on Energy
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Upton:

Enclosed please find the U.S. Environmental Protection Agency's responses to the Committee's Questions for the Record following the June 7, 2018, hearing titled, "Improving the Hydropower Licensing Process."

I hope this information is helpful to you and the members of the Committee. If you have any questions, please contact me or your staff may contact Denis Borum in my office at borum.denis@epa.gov or at (202) 564-4836.

Sincerely

Tracy M. Lyons
Associate Administrator

Enclosure

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QUESTIONS FOR Tl-m RECORD
Submitted to John Goodin, Acting Director
Office of Wetlands, Oceans and Watersheds, Office of Water
U.S. Environmental Protection Agency
"Improving the Hydropower Licensing Process"
House Committee on Energy and Commerce, Subcommittee on Energy June
7, 2018

The Honorable Fred Upton

On August 15, 2017, President Trump signed Executive Order 13807, which established the "One Federal Decision" policy for Federal review of major infrastructure projects and set a goal for completing reviews and authorizations within two years. On April 10, 2018, a Memorandum of Understanding (MOU) outlining a framework for implementing the E.O. became effective.

a. Please describe how the E.O. will be implemented for hydropower projects.

Response: The goal of the MOU is to provide a framework for federal agencies to implement the One Federal Decision policy for major infrastructure projects, as directed by E.O. 13807. Although hydropower projects are not specifically mentioned in the MOU, we recognize that large hydropower projects could be important infrastructure under that framework. The EPA understands that there is concern that Clean Water Act section 401 certification may be a source of delay for major projects. The EPA intends to consult with the states and tribal organizations as the Agency considers updates to the administrative regulations governing section 401 certification and clarifying guidance to the states, tribes, federal agencies, and the regulated community.

The Honorable Cathy McMorris Rodgers —

FERC data shows that Clean Water Act Section 401 water quality certification is another area significantly delaying license issuances — again, in some cases 5, 10 years or longer. While Section 401 authority is delegated to the states, was the EPA itself aware of this? Can you review this process and report back findings and recommendations to address this problem?

Response: Clean Water Act section 401 provides that states complete their section 401 analysis and decision "within a reasonable period of time (which shall not exceed one year)." As described in the statute and regulations, a state waives certification when it does not act on an application within one year, or within a reasonable period of time less than one year as determined by the licensing or permitting agency.

The EPA understands that there is concern that Clean Water Act section 401 certification may be a source of delay for major projects. The EPA intends to consult with the states on this and has reached out to several state associations and tribal organizations as the Agency considers updates to the administrative regulations governing section 401 certification and opportunities to provide clarifying guidance to the states, tribes, federal agencies, and the regulated community.

The Honorable Billy Long -

In 2010 the EPA developed a handbook to help states and tribes make informed and timely decisions regarding the Clean Water Act. You say that the EPA has heard the concerns from stakeholders regarding this process and the need to increase the efficiency and effectiveness of environmental reviews.

- a, The EPA has identified a "potential action" in its most recent regulatory agenda to update the 2010 handbook Can you describe that action?

Response: The Regulatory Agenda identifies "Clarification of State Certification Procedures Under Section 401 of the Clean Water Act" as a potential future EPA action. As noted in the Regulatory Agenda, the EPA is considering updates to the existing regulations, which pre-date the establishment of the EPA, and opportunities to provide clarifying guidance. Updates to the 2010 handbook, "Clean Water Act Section 401 Water Quality Certification: A Water Quality Protection Tool for States and Tribes," could be one such opportunity. The EPA has recently reached out to initiate conversations with the states and tribes on this important issue to inform EPA's options and decision-making.